

REMARKS

This Amendment is responsive to the Office Action dated February 5, 2007. Applicant has amended claims 1, 21, 44, 48, 58 and 61. Claims 1-61 remain pending.

Information Disclosure Statement

The Office Action indicated that two references (WO 02/41771 and WO 02/096512) submitted in the Information Disclosure Statement filed on September 26, 2005 were not considered because the submitted copies of these references were illegible. With this Amendment, Applicant submits another Information Disclosure Statement citing the two references. Applicant has acquired new copies of the references, and hopes that these copies are adequately legible.

Claim Rejection Under 35 U.S.C. § 102

The Office Action rejected claims 1-7, 9, 11-20, 21-28, 30, 32-49, 52-61 under 35 U.S.C. § 102(e) as being anticipated by Singhal et al. (US 2005/0060001, hereinafter “Singhal”). Applicant respectfully traverses the rejection to the extent such rejection may be considered applicable to the amended claims. Singhal fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C. § 102(e).

Applicant has amended each of independent claims 1, 21, 44, 48, 58 and 61 for purposes of clarification. For example, Applicant has amended claims 1, 21, 44 and 48 to clarify that each of the identified posture events is associated with the therapy parameter set that was being used when the posture event was identified.

Applicant has also amended each of independent claims 1, 21, 44, 48, 58 and 61 to clarify that each of the therapy parameter sets is associated with a plurality of the identified posture events. Furthermore, Applicant has amended each of the independent claims to clarify that a posture metric value is determined for each of the therapy parameter sets, and that the posture metric value for any one of the therapy parameter sets is determined based on the plurality of identified posture events associated with that parameter set.

Applicant has also amended each of the independent claims to recite that the activity metric value determined for each of the therapy parameter sets indicates an efficacy for the

therapy parameter set. Additionally, Applicant has amended independent claims 48, 58 and 61 to recite that the list of the plurality of therapy parameter sets and associated posture metric values are presented for comparison of the efficacies of the plurality of therapy parameter sets.

Singhal fails to disclose each and every limitation of the amended independent claims, as required by section 102(e). For example, Singhal fails to disclose that each therapy parameter set is associated with a plurality of identified posture events, as required by each of the independent claims. Furthermore, Singhal fails to disclose determining a posture metric value that indicates efficacy for each of the therapy parameter sets based on the plurality identified posture events associated with that therapy parameter set, as required by each of the independent claims.

Instead, Singhal discloses techniques for providing closed loop therapy based on sensor signals. More particularly, a medical device according to Singhal learns to provide efficacious therapy by associating a detected event with therapy information, and then controlling delivery of therapy according to the therapy information whenever the event is subsequently detected.¹ In this manner, the Singhal device automatically provides the appropriate therapy for frequently occurring events, e.g., activities that the patient frequently undertakes, allowing the patient to avoid having to manually adjust the therapy each time the event occurs.² Singhal also discloses that the events and therapy information may be presented as diagnostic information.³

However, Singhal fails to teach or suggest determining, for each of a plurality of therapy parameter sets, a value of a posture metric based on the plurality of identified posture events that were associated with that therapy parameter set. Singhal does not disclose determining any value for a particular therapy parameter set based on a plurality of identified posture events associated with the therapy parameter set, much less a posture metric value that indicates an efficacy of the therapy parameter set.

Additionally, with respect to independent claims 48, 58 and 61, as well as dependent claims 12, 33 and 45, Singhal fails to disclose presenting a list of therapy parameter sets and associated posture metric values. Singhal nowhere mentions a list. The paragraphs cited in the Office Action mention timing diagrams and graphs, but do not mention lists.

¹ Singhal et al., Abstract, paragraph [0006].

² Singhal et al, Paragraph [0011].

³ Singhal et al, Paragraphs [0052], [0068] and [0069].

Furthermore, Singhal does not disclose ordering a list based on posture metric values as required by claims 13, 34, 46, 52, 59, or ordering a list based on user selection, as required by claims 14, 35, 47, 52 and 60.

The remaining dependent claims are allowable for at least the reasons set forth above with respect to independent claims 1, 21, 44, 48, 58 and 61, from which they depend. Applicant does not acquiesce to the rejection and associated arguments for any dependent claims not specifically addressed herein.

Singhal fails to disclose each and every limitation set forth in claims 1-7, 9, 11-20, 21-28, 30, 32-49, 52-61. For at least these reasons, the Office Action has failed to establish a *prima facie* case for anticipation of Applicant's claims 1-7, 9, 11-20, 21-28, 30, 32-49, 52-61 under 35 U.S.C. § 102(e). Withdrawal of this rejection is requested.

Claim Rejection Under 35 U.S.C. § 103

The Office Action rejected claims 8, 10, 29, 31, 50 and 51 under 35 U.S.C. § 103(a) as being obvious over Singhal. Applicant respectfully traverses the rejection to the extent such rejection may be considered applicable to the claims as amended.

Claims 8, 10, 29, 31, 50-51 are allowable for at least the reasons described above with respect to independent claims 1, 21 and 48, from which they depend.

Additionally, as recognized in the Office Action, Singhal is only prior art for the present application under 35 U.S.C. § 102(e). At the time the invention claimed in the present application was made, it was subject to an obligation of assignment to Medtronic, Inc. The claimed invention was assigned to Medtronic, Inc. on July 14, 2004 (Reel/Frame No. 015720/0028). At the time the invention claimed in the present application was made, the subject matter of Singhal was either owned by, or also subject to an obligation of assignment to, Medtronic, Inc. The subject matter of Singhal was assigned to Medtronic, Inc. on October 10, 2003 (Reel/Frame No. 14638/0321).

In other words, at the time of the invention claimed in the present application, Singhal and the claimed invention were both at least subject to an obligation of common assignment to Medtronic, Inc. Consequently, section 103(c)(1) bars any rejection under section 103 based on Singhal.

For at least these reasons, the Office Action has failed to establish a *prima facie* case for non-patentability of Applicant's claims 8, 10, 29, 31, 50-51 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

CONCLUSION

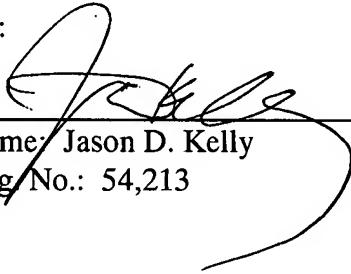
All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

6-5-07

SHUMAKER & SIEFFERT, P.A.
1625 Radio Drive, Suite 300
Woodbury, Minnesota 55125
Telephone: 651.735.1100
Facsimile: 651.735.1102

By:


Name: Jason D. Kelly
Reg. No.: 54,213